IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1043 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 No

NARESHKUMAR RAMANLAL SHAH

Versus

MINESHKUMAR RATILAL SHAH

Appearance:

MR SATYAJIT SEN for Petitioner

Mr.N.J.Bhatt and MR DARSHAN M PARIKH for Respondents No.1 and 2.

MR MJ THAKORE for Respondent No. 3

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 08/05/98

ORAL JUDGEMENT

This First Appeal is directed against the judgment and order dated 25.11.1986 passed by the learned City Civil Judge, Court No.9, in Civil Misc.Application No.40/85, which was filed by the appellant under the

provisions of the Arbitration Act,1940.

The appellant and the respondents were carrying on business in partnership. Partnership deed was executed on 17.10.1975. The appellant and his brother, who is respondent No.3, were entitled to a share of 30 per cent each while respondents Nos. 1 and 2 were entitled to 20 per cent share each in the partnership. It was provided in the terms of partnership that, in case of disputes, they were to be resolved by arbitration and not by litigation.

In 1983, a deed of retirement was executed under which the appellant and his brother, respondent No.3, retired from the partnership firm. The said deed purports to have been executed on 14.3.1983 and it was signed by all the four partners. The deed made a reference to submission of the issue of retirement to the arbitration of three respectable persons named in the deed.The deed then referred to the decision of the Arbitrator which was to the effect that the appellant was to receive Rs.1,54,089.51 ps. and his brother, the respondent No.2 was to receive Rs.1,52,921.73ps. and they were to retire from the firm on receipt of the said amounts by equal monthly instalments on or before 31.12.1984. The deed also set out the other terms of retirement. It is not in dispute that the respondents Nos. 1 and 2 paid the agreed amounts by monthly instalments by cheques to the appellant and respondent No.3. However, on 1.12.1984, the appellant sent a notice through his Advocate to respondents Nos. 1 and 2 raising certain objections to the decision of the Arbitrator. In particular, he raised dispute about the valuation of the goodwill and the stock made by the arbitrators. The respondents Nos. 1 and 2 sent a reply on 26.12.1984 rejecting contentions and disputes raised by the appellant. They referred to the decision of the Arbitrator and the fact that they had paid the amount to the appellant and his brother in accordance with the said decision. They also referred to the deed of retirement executed by the appellant. They, therefore, contended that nothing remained payable to the appellant. The appellant thereupon filed Civil Misc.Application No.40/85 in the City Civil Court. He contended that no legal reference was ever made to the so-called Arbitrators. In para 2 of the application, he said that the parties had orally appointed the persons named therein as Arbitrators and Mediators. But in para 3 of the application,he contended that no legal reference was ever made to the so-called arbitrators and no award was given. According to him, the said persons had given their oral verdict.

The amounts already mentioned previously were to be paid to the appellant and his brother by monthly instalments. But according to the appellant, at that time he was given an assurance of detailed scrutiny of accounts and payment of his legitimate share found due thereafter. The appellant alleged that the said persons had neglected to proceed with the reference. The appellant, therefore, made the following prayers in para 10(A) and (B) of the application:-

(A) that the Honourable Court be pleased to revoke the authority of alleged Arbitrators named not duly appointed and described in para 2 above as they have neglected and declined and refused to act as such by proceedings further as promised to your applicant vis-a-vis disputes enumerated in applicant's notice dated 1.12.84.

(B) That this Honourable Court be pleased to nominate any other person of its own to work as sole Arbitrator and hand over the reference to him to resolve the disputes and differences of the parties forthwith and to give award thereto."

The respondents Nos. 1 and 2 resisted the application by filing their reply. They contended that appellant and his brother had retired from the firm on the Fagan Vad Amas of S.Y.2039 and two new partners had been taken in. They admitted that for fixation of the amounts to be paid to the appellant and his brother, help of three persons was sought and they persuaded both the parties to arrive at agreed figures of amounts payable to the appellant and his brother. According to him, in a meeting held on 8.6.1983, it was decided by the parties in the presence of the said three gentlemen that the partnership business was to be taken over by the respondents Nos. 1 and 2 and the appellant and respondent No.3 were to retire therefrom. They contended that the amounts payable to appellant and respondent No.3 were arrived at by mutual agreement and not fixed by the oral verdict as alleged. They alleged that the appellant, after encashing the cheques and receiving the agreed amount,had mala fide raised an objection with ulterior motives. The deed executed by the parties had been acted upon and the application was not tenable.

The respondent No.3,who is the brother of the appellant, filed a written statement supporting the stand

of respondents Nos. 1 and 2 and opposing the prayer made by the appellant.

The learned City Civil Court Judge, after considering materials on the record and submissions made on behalf of the parties, came to the conclusion that the deed of dissolution was very clear on all points and no dispute seemed to have remained after the settlement. He held that according to clause (10) of the deed, the dispute was referred to the arbitrators, and they have settled the disputes between the parties. The appellant had received the entire amount which had been agreed to be paid to him. The learned Judge, therefore, came to the conclusion that there was no ground for granting any of the prayers made in the application. He, therefore, dismissed the application. The appellant being aggrieved by the said judgment and order dismissing his application, has filed this appeal.

Initially, when the hearing started there was some doubt as to the maintainability of the appeal. But after some discussion, it was agreed at the Bar that the appeal may be decided on merits instead of going into the question of its maintainability.

Now, certain facts are not in dispute. The appellant did execute the deed of retirement which refers to the resolution of the dispute by three persons named in the deed and the acceptance thereof by the parties. It is also not in dispute that the appellant received the entire amount which was payable to him under the deed of retirement. It is only after receiving the amount that he raised objections. It is pertinent to note that his brother, who is respondent No.3, raised no objection. There was no reason for the appellant to sign the deed of retirement, if the decision of the Arbitrators or Mediators was not acceptable to him. He has stated in his application that the mediators influenced him to sign the deed by giving an assurance of detailed scrunity of accounts subsequently. However, there is no evidence to substantiate or prove this bare allegation made in the application. The fact remains that the appellant signed the deed of retirement and received the entire amount as agreed. He did not take proceedings to challenge the deed of retirement on the ground that it was not binding on him. In view of the unequivocal terms of the deed,it is not possible to contend that any dispute remained between the parties.

The learned Advocate for the appellant, however, submitted that, though the deed of retirement purports to

be dated 14.3.1983, the stamp papers were purchased on 29.9.1983. The learned Advocate for the respondents had given an explanation before the trial Court that the decision with regard to retirement was taken in the month of March and the stamp was purchased subsequently. The learned Judge has accepted his explanation. Moreover, the fact remains that the appellant had not disputed his signature on the deed of retirement and it cannot be said that it was a got up document or any fraud was committed. The learned Judge, therefore, rightly held that there had been a settlement between the parties and the appellant and his brother had retired from the firm on receipt of the amounts which had been agreed to be paid to them. I agree with the reasoning given by the learned trial Judge.

In view of the above conclusion, it is not necessary to refer to some authorities cited by the learned Advocate for the appellant because once it is found that no disputes or differences remained after the deed of retirement executed by all parties, the appellant was not entitled to any reliefs claimed in the application. The appeal, therefore, fails and is dismissed. There shall be no order as to costs.

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